IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2265 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ?**-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ?**-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?**-No.**

5 Whether it is to be circulated to the civil judge ?**-No.**

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IBRAHIM KHAN HAJI KHAN PATHAN - Petitioner(s)
Versus
GULAM MAHMAD SULEMAN JIVA & 4 - Respondent(s)

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Appearance :
MR TS NANAVATI for Petitioner(s) : 1,
MR LR PATHAN for Respondent(s) : 1,
MR JAL SOLI UNWALA for Respondent(s) : 2,
None for Respondent(s) : 3 - 5.

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 21/03/2007

ORAL JUDGMENT

1. Rule. The learned advocate for the respondents waives service of Rule.

2. Ibrahim Khan Haji Khan Pathan, petitioner-original defendant no.5 has filed this petition under Article 227 of the Constitution of India with a prayer that this Court may be pleased to quash and set aside the order dated 29/5/2006 passed by the learned Principal Civil Judge, Jhagadia passed below Exh.5 in Regular Civil Suit No.50 of 2006 and the order dated 11/1/2007 passed in Misc. Civil Appeal No.45 of 2006 by the learned Additional District Judge, Fast Track Court No.4, Bharuch. The petition was filed on 20/1/2007 and this Court has passed orders on 25/1/2007, 2/2/2007, 15/2/2007, 21/2/2007 and 26/2/2007 and when the matter was heard on 19/3/2007, it was part heard and the Court has directed that matter to be heard after admission.

3. I have heard Mr.T.S.Nanavati, learned advocate for the petitioner. On behalf of respondent no.1,

Mr.M.B.Gandhi, learned advocate appears. The facts giving rise to this petition are as under:

3.1) There is a property situated in Block No.478 admeasuring 0 Hectre, 94 Are, 00 sq. mts. Originally one Ismailkhan Haji Khan Pathan was owner of the property in this behalf. Ismailkhan Haji Khan Pathan is a father of respondent nos.3, 4 and 5 and husband of respondent no.2. On 12/5/2000, Ismailkhan Pathan has sold the property the respondent no.1, Gulam Mahmad Suleman Jiva, respondent no.1 herein in this behalf and registered sale-deed was executed. From that day onwards, respondent no.1 is an owner and in possession of the property in question.

4. Mr.M.B.Gandhi, learned advocate states that Ismilekhan Pathan has given possession of the property to respondent no.1. Meanwhile Ismailkhan Haji Khan Pathan has expired on 5/2/2004. Rabia Khatun Israhimkhan Pathan, Respondent no.2, wife of Ismailkhan Haji Khan Pathan and respondent nos.3 4

and 5, sons of deceased Ismailkhan Pathan has once again sold the property on 8/2/2006 in favour of Ibrahim Khan Haji Khan Patha, petitioner herein who is defendant no.5 in the main matter. He happens to be real brother of deceased Ismailkhan Haji Khan Pathan.

5. Mr.T.S.Nanavati, learned advocate for the petitioner states that after death of Ismailkhan Pathan on 5/2/2004, names of respondent nos.2 to 5 came to be recorded in revenue entries in respect of properties as legal heirs and representatives. The suit property always remained in unhindered and absolute possession of Ismailkahn Haji Khan Pathan during his life-time and subsequently after his death with the legal heirs and representatives. The revenue was accordingly paid by Ismailkhan Haji Khan Pathan during his life-time and subsequently after his death by the legal heirs and representatives.

6. In view of the aforesaid proceedings, Gulam Mahmad

Suleman Jiva, respondent no.1 herein has filed Regular Civil Suit No.50 of 2006 against respondent nos.2 to 5 and the petitioner herein challenging document executed and registered with sub-registrar of Documents, Jhagadia dated 8/2/2006 at Sr. No.175 in respect of suit property as also seeking permanent injunction against its implementation.

7. During the pendency of the proceedings, on 14/4/2006, the Court Commissioner came to be appointed and the Court Commission work came to take place and the same is at Exh.15/2 before the Trial Court.

8. Original defendant no.5 has file reply on 25/4/2006 at Exh.21 and affidavits at Exh.32 to 35 were also filed in support of defendant no.5 also.

9. The matter was heard by the learned Trial Judge and the learned Trial Judge by his judgment and order dated 29/5/2004, allowed the injunction application of the plaintiff below Exh.5 after bi-parte

hearing.

10.Being aggrieved and dissatisfied with the same, the original defendant no.5-petitioner herein has filed Misc. Civil Appeal No.45 of 2006 before the District Court, Bharuch. The said appeal came to be disposed of as rejected by the learned District Judge, Bharuch dated 11/1/2007.

11.Being aggrieved and dissatisfied with the same, the present petitioner has filed this petition before this Court.

12.I have heard Mr.T.S.Nanavati, learned advocate for the petitioner and Mr.Gandhi, learned advocate for the respondents.

13.Mr.T.S.Nanavati, learned advocate for the petitioner has stated that the Court Commissioner came to be appointed and the Court Commission work came to take place and the same is at Exh.15/2 before the Trial Court. He has also relied upon

some of the documents therein and the affidavit filed also in the record of the case. It is his case that the petitioner at present is in possession of the said suit land and it is stated that prior thereto the said land was in the possession of the predecessor in title to the petitioner being the deceased Ismailkhan Haji Hajikhan Pathan and thereafter the legal heirs of the said deceased being the original defendant nos.1 to 4. He has stated that the revenue in respect of the land bearing survey no.478 of Mouje Kapalsadi Ta.-Jhagadia always came to be paid by Ismailkhan Haji Hajikhan Pathan during his lifetime and thereafter by their legal heirs and representatives. He has also relied upon the copy of Khata No.307 dated 10/7/2005 of village Kapalsadi in the name of widow of the deceased Ismailkah Haji Hajikhan Pathan and Ayubkhan Ismailkhan Pathan. He has stated that revenue for the year 2004 came to be paid in respect of Khata No.319 and Khata No.307 under revenue receipts paid by the Ismailkhan Haji Hajikhan Pathan and

subsequently by the widow and legal heirs of the deceased Ismailkhan Haji Hajikhan Pathan.

14.He has stated that after the death of Ismailkan Haji Hajikhan Pathan, the names of legal heirs and representatives of the deceased came to be recorded in the revenue entries. In view of the revenue record, certain presumptive value required to be attached to the revenue entries and the Trial Court and the Appellate Court has not considered the same in this behalf.

15.On the other hand Mr.Gandhi, learned advocate for the respondent has tried to support the orders passed by the Courts below in this behalf. He has stated that this Court under Article 227 of the Constitution of India, may not exercised jurisdictional powers as there is no error of law or jurisdictional error in this behalf. He has further stated in his affidavit that property originally belonged to deceased Ismailkhan and he being the owner of the property, namely, Survey

No.478, admeasuring 94 RA i.e. 9400 sq. mtrs. for which a registered sale deed was executed on 12/5/2000 and since then Gulam Mahmad Suleman Jiva, respondent no.1 herein is the owner of the property. Ismailkhan Pathan died on 5/2/2004. In spite of his death, the present petitioner-original defendant no.5 namely Ibrahimkhan who got a registered sale deed dated 8/2/2006 from the heirs of the deceased Ismailkhan. That Ibrahimkhan and Ismailkhan were the real brothers and now Ismailkhan has expired and therefore, with a view to save the skin and to perpetuate illegalities the sale deed dated 8/2/2000 has been got registered in the name of defendant no.5-present petitioner from the heirs of deceased Ismmailkhan. He has further stated that law is very clear on the point that once the property is sold by registered sale deed, the original owner (Ismailkhan) transferred his ownership in favour of the present petitioner and therefore, on his death on 5/2/2004 the heirs have no right to inherit any property and once the ownership is transferred, the heirs of the deceased

Ismailkhan had no ownership and no right title or interest to sell the property and therefore, it is well established principle of law “Nobody can transfer a better title than he himself has”. The original defendant nos.1 to 4 and the present respondent nos.2 to 5 had no right, title or interest and therefore, the present petitioner also does not get any title and in this background a person who has no title cannot complete with the person who has vested title in the property and hence the petition is liable to be dismissed.

16. As regards revenue record, he has submitted that the revenue record is only for fiscal purpose and therefore, entry or no entry does not make any difference. On the contrary, when the registered sale deed is executed, then in that case it is the duty of the concerned officer to effect the change in the entry on transfer of ownership and therefore, Mamlatdar and Talati have failed in their duty in intimating to the revenue officer for effecting the charge in the entry and in this

background for the mistake committed by the officers, the title of the present petitioner-Gulam Mohammmed Suleman Jiva cannot be in clouds. On the contrary, looking to the provisions of the Transfer of Property Act, the title to the property is transferred and a sale is complete moment a registered document is executed. In the present case, the full consideration is paid and deed is registered on 12/5/2000 and therefore, a complete title is transferred in favour of the deponent and the petitioner had no title whatsoever. Taking into consideration the aforesaid background and voluminous documents, which are produced on the record of the case, it is very clear that both the Courts have come to the conclusion about the sale deed as well as possession. Not only that but the heirs have never challenged the title of the present deponent and therefore, a person who is a stranger to the title has no right to declare the action of the deceased as illegal or void and no entry in the revenue record cannot affect the rights of the person who has purchased the property

by registered sale deed. The District Court has also in the order observed all the things and has held that the present defendant no.5-petitioner herein cannot succeed and on the basis of the discussion it is held that the present petitioner has paid full consideration towards the suit property. Not only that but neighbours of the suit property have also supported affidavits in favour of the respondent no.1 and that revenue entries have got only presumptive value. In light of the findings of the facts, the petition is not maintainable.

17. He has further stated that petitioner is also a owner of the adjoining land and over and above this land other two to three lands, which belonged to Ismailkhan were also purchased by the petitioner and, therefore, the act of the deceased Ismailkhan is absolutely legal and the heirs with a view to defraud the petitioner have done an act by executing a malafide sale deed dated 8/2/2006, which has no legal effect, which is absolutely null

and void and the defendant nos.1 to 4 who had no title cannot sell the property and therefore, the petition is liable to be dismissed.

18.I have considered all the facts and circumstances of the case. In view of the submissions made by the respondent in his affidavit dated 2/2/2007 for which I have considered the facts that they have also obtained property by registered sale deed and the petitioner has no right on the property and both the Courts below have appropriately considered the same and there is no error or jurisdiction and therefore, the petition is liable to be rejected.

19.In view of the above, I am of the view that both the lower Court has rightly appreciated the facts and circumstances of the case and passed the order in accordance with law and therefore, the same orders of both the lower Courts are confirmed. In view of the same, petition of the petitioner is rejected. Rule discharged to that extent. Special Civil Application is disposed of accordingly.

(K.M.Mehta, J.)

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